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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 WILMINGTON SAVINGS FUND SOCIETY,  
8 Plaintiff(s),  
9 v.  
10 SATICOY BAY LLC SERIES 9338  
11 WILDERNESS GLEN AVANUE, et al.,  
12 Defendant(s).

Case No. 2:17-CV-1775 JCM (BNW)

ORDER

13  
14 Presently before the court is plaintiff Wilmington Savings Fund Society, FSB's  
15 ("Wilmington") motion for summary judgment. (ECF No. 38). Defendant Saticoy Bay LLC  
16 Series 9338 Wilderness Glen Avenue ("Saticoy Bay") filed a response (ECF No. 42), to which  
17 Wilmington replied (ECF No. 44).

18 Also before the court is Saticoy Bay's motion for summary judgment. (ECF No. 39).  
19 Wilmington filed a response (ECF No. 43), to which Saticoy Bay replied (ECF No. 45).

20 **I. Facts**

21 This action arises from a dispute over real property located at 9338 Wilderness Glen  
22 Avenue, Las Vegas, Nevada 89178 ("the property"). (ECF No. 1).

23 Darren Baca and Amy Baca ("the Bacas") purchased the property on or about October 12,  
24 2005. *See* (ECF No. 38-1). The Bacas financed the purchase with a loan in the amount of  
25 \$448,523.00 from Bank of America, N.A. ("BANA"). *Id.* BANA secured the loan with a deed of  
26 trust, which names BANA as the lender and beneficiary, and PRLAP, Inc. as the trustee. *Id.*

27 On February 9, 2012, defendant Yellowstone Homeowners Association ("Yellowstone"),  
28 through its agent Leach Johnson Song & Gruchow ("S&G"), recorded a notice of delinquent

1 assessment lien (“the lien”) against the property for the Bacas’ failure to pay Yellowstone in the  
2 amount of \$973.49. (ECF No. 38-4). On April 27, 2012, Yellowstone recorded a notice of default  
3 and election to sell pursuant to the lien, stating that the amount due was \$1,917.20 as of April 27,  
4 2012. (ECF No. 38-5).

5 On February 15, 2013, Yellowstone mailed copies of the notice of default to Darren Baca  
6 and BANA. (ECF No. 39-7). On March 29, 2014, BANA assigned all beneficial interest in the  
7 deed of trust to Wilmington. (ECF No. 38-3). Nine days later, BANA recorded the assignment  
8 with the Clark County recorder’s office. *Id.* On February 5, 2015, First American Title Insurance  
9 Company notified Yellowstone that Wilmington had a security interest in the property. (ECF No.  
10 38-7).

11 On March 18, 2015, Yellowstone recorded a notice of foreclosure sale against the property,  
12 stating that the amount due was \$7,218.06 as of March 11, 2015. (ECF No. 38-8). On that same  
13 day, Yellowstone mailed copies of the notice of foreclosure sale to BANA. (ECF No. 39-3). On  
14 February 25, 2016, Yellowstone sold the property in a non-judicial foreclosure sale to Saticoy Bay  
15 in exchange for \$176,100.00. (ECF No. 38-10). On May 5, 2016, Yellowstone recorded the  
16 foreclosure deed with the Clark County recorder’s office. *Id.*

17 On June 28, 2017, Wilmington initiated this action, asserting four causes of action: (1)  
18 quiet title/declaratory relief against all defendants; (2) declaratory relief under the Fifth and  
19 Fourteenth Amendments to the United States Constitution against all defendants; (3) quiet title  
20 under the Fifth and Fourteenth Amendments of the United States Constitution against all  
21 defendants; (4) injunctive relief against Saticoy Bay; and (5) unjust enrichment against all  
22 defendants. (ECF No. 1). On July 16, 2018, Saticoy Bay asserted two counterclaims against  
23 Wilmington for (1) quiet title and (2) declaratory relief. (ECF No. 33).

24 Now, Wilmington and Saticoy Bay have filed cross-motions for summary judgment. (ECF  
25 Nos. 38, 39).

## 26 **II. Legal Standard**

27 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,  
28 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

1 show that “there is no genuine dispute as to any material fact and the movant is entitled to a  
2 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is  
3 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,  
4 323–24 (1986).

5 For purposes of summary judgment, disputed factual issues should be construed in favor  
6 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be  
7 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts  
8 showing that there is a genuine issue for trial.” *Id.*

9 In determining summary judgment, a court applies a burden-shifting analysis. The moving  
10 party must first satisfy its initial burden. “When the party moving for summary judgment would  
11 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a  
12 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has  
13 the initial burden of establishing the absence of a genuine issue of fact on each issue material to  
14 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)  
15 (citations omitted).

16 By contrast, when the nonmoving party bears the burden of proving the claim or defense,  
17 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential  
18 element of the non-moving party’s case; or (2) by demonstrating that the nonmoving party failed  
19 to make a showing sufficient to establish an element essential to that party’s case on which that  
20 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving  
21 party fails to meet its initial burden, summary judgment must be denied and the court need not  
22 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–  
23 60 (1970).

24 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
25 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
26 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the  
27 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient  
28 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing

1 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,  
2 631 (9th Cir. 1987).

3 In other words, the nonmoving party cannot avoid summary judgment by relying solely on  
4 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,  
5 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the  
6 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue  
7 for trial. *See Celotex*, 477 U.S. at 324.

8 At summary judgment, a court’s function is not to weigh the evidence and determine the  
9 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*  
10 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all  
11 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the  
12 nonmoving party is merely colorable or is not significantly probative, summary judgment may be  
13 granted. *See id.* at 249–50.

### 14 **III. Discussion**

15 The parties have filed cross-motions for summary judgment, disputing whether the  
16 foreclosure sale extinguished the deed of trust. (ECF Nos. 38, 39).

17 Under Nevada law, “[a]n action may be brought by any person against another who claims  
18 an estate or interest in real property, adverse to the person bringing the action for the purpose of  
19 determining such adverse claim.” Nev. Rev. Stat. § 40.010. “A plea to quiet title does not require  
20 any particular elements, but each party must plead and prove his or her own claim to the property  
21 in question and a plaintiff’s right to relief therefore depends on superiority of title.” *Chapman v.*  
22 *Deutsche Bank Nat’l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation  
23 marks omitted). Therefore, a party must show that its claim to the property is superior to all others  
24 in order to succeed on a quiet title action. *See also Breliant v. Preferred Equities Corp.*, 918 P.2d  
25 314, 318 (Nev. 1996) (“In a quiet title action, the burden of proof rests with the plaintiff to prove  
26 good title in himself.”).

1 Section 116.3116(1) of the Nevada Revised Statutes<sup>1</sup> allows an HOA to place a lien on its  
2 homeowners' residences for unpaid assessments and fines. Nev. Rev. Stat. § 116.3116(1).  
3 Moreover, NRS 116.3116(2) gives priority to that HOA lien over all other encumbrances with  
4 limited exceptions—such as “[a] first security interest on the unit recorded before the date on  
5 which the assessment sought to be enforced became delinquent.” Nev. Rev. Stat. §  
6 116.3116(2)(b).

7 The statute then carves out a partial exception to the subparagraph (2)(b) exception for first  
8 security interests. *See* Nev. Rev. Stat. § 116.3116(2). In *SFR Investments Pool 1 v. U.S. Bank*, the  
9 Nevada Supreme Court provided the following explanation:

10 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces,  
11 a superpriority piece and a subpriority piece. The superpriority piece, consisting of  
12 the last nine months of unpaid HOA dues and maintenance and nuisance-abatement  
charges, is “prior to” a first deed of trust. The subpriority piece, consisting of all  
13 other HOA fees or assessments, is subordinate to a first deed of trust.  
334 P.3d 408, 411 (Nev. 2014) (“*SFR Investments*”).

14 NRS 116.3116 *et seq.* (“Chapter 116”) permits an HOA to enforce its superpriority lien  
15 with a nonjudicial foreclosure sale. *Id.* at 415. Thus, “NRS 116.3116(2) provides an HOA a true  
16 superpriority lien, proper foreclosure of which will extinguish a first deed of trust.” *Id.* at 419; *see*  
17 *also* Nev. Rev. Stat. § 116.3116(2)(1) (providing that “the association may foreclose its lien by sale”  
18 upon compliance with the statutory notice and timing rules).

19 NRS 116.3116(1) provides that when an HOA forecloses on a property pursuant to NRS  
20 116.3116(4), the following recitals in the deed are conclusive proof of the matters recited:

- 21 (a) Default, the mailing of the notice of delinquent assessment, and the recording  
22 of the notice of default and election to sell;  
23 (b) The elapsing of the 90 days; and  
(c) The giving of notice of sale[.]

24 Nev. Rev. Stat. § 116.3116(1)(a)–(c).<sup>2</sup> “The ‘conclusive’ recitals concern . . . all statutory  
25 prerequisites to a valid HOA lien foreclosure sale.” *See Shadow Wood Homeowners Assoc. v. N.Y.*

26 <sup>1</sup> The 2015 Legislature revised Chapter 116 substantially. 2015 Nev. Stat., ch. 266. Except  
27 where otherwise indicated, the references in this order to statutes codified in NRS Chapter 116 are  
28 to the version of the statutes in effect in 2011–13, when the events giving rise to this litigation  
occurred.

<sup>2</sup> The statute further provides as follows:

1 *Cnty. Bancorp., Inc.*, 366 P.3d 1105 (Nev. 2016). Nevertheless, courts retain the equitable  
2 authority to consider quiet title actions even when an HOA's foreclosure deed contains statutorily  
3 conclusive recitals. *See id.* at 1112.

4 Here, the parties have provided the recorded notice of delinquent assessment, the recorded  
5 notice of default and election to sell, the recorded notice of trustee's sale, and the recorded trustee's  
6 deed upon sale. *See* (ECF Nos. 38-4, 38-5, 38-8, 38-10). Further, the recorded trustee's deed upon  
7 sale contains the necessary recitals to establish compliance with NRS 116.31162 through NRS  
8 116.31164. (ECF No. 38-10); *see Shadow Wood*, 466 P.3d at 1112. Therefore, pursuant to NRS  
9 116.31166 and the recorded foreclosure deed, the foreclosure sale was valid to the extent that it  
10 complied with NRS 116.31162 through NRS 116.31164.

11 While NRS 116.3116 accords certain deed recitals conclusive effect, it does not  
12 conclusively entitle the buyer at the HOA foreclosure sale to success on a quiet title claim. *See*  
13 *Shadow Wood*, 366 P.3d at 1112 (rejecting that NRS 116.31166 defeats, as a matter of law, actions  
14 to quiet title). Thus, the question remains whether plaintiff has demonstrated sufficient grounds  
15 to justify setting aside the foreclosure sale. *See id.*

16 "When sitting in equity . . . courts must consider the entirety of the circumstances that bear  
17 upon the equities. This includes considering the status and actions of all parties involved, including  
18 whether an innocent party may be harmed by granting the desired relief." *Id.*

19  
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21  
22 2. Such a deed containing those recitals is conclusive against the unit's  
23 former owner, his or her heirs and assigns, and all other persons. The receipt for the  
24 purchase money contained in such a deed is sufficient to discharge the purchaser  
25 from obligation to see to the proper application of the purchase money.

26 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164  
27 vests in the purchaser the title of the unit's owner without equity or right of  
28 redemption.

Nev. Rev. Stat. § 116.31166(2)–(3).

1           Wilmington argues that the court should declare that the deed of trust encumbers the  
2 property despite Yellowstone’s compliance with Chapter 116 because (1) the mortgage protection  
3 clause in the CC&RS preserved the deed of trust and (2) Yellowstone foreclosed on the property  
4 pursuant to an unconstitutional statute. (ECF No. 38). The court disagrees.

5           *a. Mortgage protection clause in the CC&RS*

6           Wilmington argues that the CC&Rs contain a mortgage protection clause that prevents a  
7 Chapter 116 foreclosure sale from extinguishing the deed of trust. (ECF No. 38). However, the  
8 Nevada Supreme Court has already held that the language of an HOA’s CC&RS cannot alter the  
9 nature of a properly conducted non-judicial foreclosure sale pursuant to Chapter 116. *See SFR*  
10 *Investments Pool I v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014) (“*SFR*”). In *SFR*, the Nevada  
11 Supreme Court held:

12           Chapter 116’s “provisions may not be varied by agreement, and rights conferred by  
13 it may not be waived . . . [e]xcept as *expressly* provided in’ Chapter 116. (Emphasis  
14 added.) “Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA’s  
15 right to a priority position for the HOA’s super priority lien.” *See 7912 Limbwood*  
16 *Court Trust*, 979 F. Supp. 2d at 1153; The mortgage savings clause thus does not  
affect NRS 116.3116(2)’s application in this case. *See Boulder Oaks Cmty. Assn v.*  
*B & J Andrews Enters., LLC*, 125 Nev. 397, 407, 215 P.3d 27, 34 (2009) (holding  
that a CC&Rs clause that created a statutorily prohibited voting class was void and  
unenforceable).

17           *Id.* Accordingly, Wilmington is not entitled to judgment as a matter of law based the mortgage  
18 protection clause in the CC&RS.

19           *b. Constitutionality of Chapter 116*

20           Wilmington argues that the court must declare that the deed of trust encumbers the property  
21 pursuant to *Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154, 1159 (9th Cir. 2016)  
22 (“*Bourne Valley*”).

23           In *Bourne Valley*, the Ninth Circuit held that Chapter 116 violated the Due Process Clause  
24 of the Fourteenth Amendment because it did not require a party foreclosing on a property to  
25 provide notice to a holder of any subordinate security interest. *See Bourne Valley*, 832 F.3d at  
26 1159. This conclusion was based on the interpretation that NRS 116.3116(1) did not incorporate  
27 the mandatory notice requirement in NRS 107.090. *Id.*

1 When the Ninth Circuit ruled in *Bourne Valley*, there was no authority on the interpretation  
2 of NRS 116.31168(1). Left with the general doctrines of statute interpretation, the court declined  
3 to incorporate NRS 107.090 on the grounds that it would render NRS 116.31168(1) superfluous.  
4 *Id.* (citing *S. Nev. Homebuilders Ass’n v. Clark Cnty.*, 117 P.3d 171, 173 (2005)).

5 Since the Ninth Circuit’s decision in *Bourne Valley*, the Nevada Supreme Court has  
6 provided its interpretation of Chapter 116, holding that NRS 116.31168(1) incorporates NRS  
7 107.090. *SFR Invs. Pool 1, LLC v. The Bank of N.Y. Mellon*, 422 P.3d 1248, 1252 (Nev. 2018)  
8 (expressly refuting *Bourne Valley*). Under this ruling, NRS 116.31168(1) requires notice to  
9 subordinate interest holders and, thus, does not violate the Fourteenth Amendment. *Id.*

10 Both the Ninth Circuit and the Supreme Court have recognized, “a [s]tate’s highest court  
11 is the final judicial arbiter of the meaning of state statutes.” *Sass v. California Bd. of Prison Terms*,  
12 461 F.3d 1123, 1129 (9th Cir. 2006) (citing *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975));  
13 Therefore, because the Nevada Supreme Court’s interpretation controls, Chapter 116 is facially  
14 constitutional under the Due Process Clause of the Fourteenth Amendment.

15 Indeed, the Ninth Circuit has confirmed this court’s analysis of Chapter 116. *See Bank of*  
16 *America, N.A. v. Arlington West Twilight Homeowners Association*, No. 17-15796, 2019 WL  
17 1461317 at \*3 (9th Cir. April 3, 2019) (holding that (1) *Bourne Valley* no longer applies in light  
18 of the Nevada Supreme Court’s opinion in *SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon* and (2)  
19 Chapter 116 is not facially unconstitutional under the Due Process Clause of the Fourteenth  
20 Amendment).

#### 21 **IV. Conclusion**

22 In light of the foregoing, the foreclosure sale extinguished Wilmington’s deed of trust. As  
23 there are no pertinent issues left in this litigation, the court will dismiss as moot all remaining  
24 causes of action.

25 Accordingly,


26 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Wilmington’s motion for  
27 summary judgment (ECF No. 38) be, and the same hereby is, DENIED.



1 IT IS FURTHER ORDERED that Saticoy Bay's motion for summary judgment (ECF No.  
2 39) be, and the same hereby is, GRANTED.

3 The clerk shall enter judgment accordingly and close the case.

4 DATED July 29, 2019.

5   
6 UNITED STATES DISTRICT JUDGE